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NO. 90-717

SUPREME COURT OF THE UNITED STATES

RAY N. JACKSON

Petitioner

VS.

GENERAL DYNAMICS CORPORATION

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE

SUPREME COURT OF THE STATE OF TEXAS

PETITIONER'S REPLY BRIEF

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NO. 90-717

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RAY N. JACKSON

Petitioner

VS.

GENERAL DYNAMICS CORPORATION

Respondent

QUESTIONS PRESENTED

1. WHETHER PETITIONER'S FOURTEENTH AMENDMENT RIGHTS WERE DENIED WHEN HE WAS DENIED ACCESS TO THE STATEMENT OF FACTS VIA NO FAULT OF HIS OWN; WHEN HE COULD NOT PROSECUTE HIS APPEAL IN ANY OTHER WAY; AND HAD SECURED THE COST OF THE STATEMENT OF FACTS?

2. WHETHER THE COURT OF APPEALS USED AN OTHERWISE FAIR RULE OF PROCEDURE TO EFFECT AN UNFAIR DENIAL OF EQUAL PROTECTION AND DUE PROCESS?

PARTIES

RAY N. JACKSON, Petitioner-Plaintiff

GENERAL DYNAMICS CORPORATION,
Respondent-Defendant

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STATEMENT OF THE CASE

This is a suit for damages in excess of $1,000.00, as stated on Page 2 of Petitioner's Petition for Writ of Certiorari to the Supreme Court of Texas and filed in this court. Petitioner's case was properly before the trial court, the Court of Appeals, the Supreme Court of Texas, and is properly before this court. The record before the Texas Appellate Courts will show the following facts:

1. The Petitioner has two fully negotiable appeal bonds on file; one for $1,000.00 and one for $2,000.00, estimated cost of statement of facts by the court reporter.[1]

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[1]Contrary to Respondent Brief in Opposition at Page 7, the Texas Rule of Appellate Procedure (TRAP) Rule 49(c) states in part as follows: "The additional security shall not release the security previously posted."

2. The Petitioner submitted his request to the court reporter to prepare the statement of facts by the filing date; the court reporter failed to do so.

3. On December 29, 1988, Petitioner perfected his appeal a second time by filing the additional appeal bond pursuant to the December 9, 1988 order of the Texas Appellate Courts (See Appendix A of Respondent Brief in Opposition).

4. Subsequently, the Court of Appeals ordered a new filing date of February 8, 1989 for the statement of facts. A copy of said order was ordered by said court to be mailed to the court reporter by the clerk of the Court of Appeals.

5. The court reporter did not prepare the statement of facts by February 8, 1989.

6. When the court reporter did not respond by February 8, 1989, Petitioner immediately filed his motion to extend the time for 30

days, along with his motion to compel the court reporter to prepare the statement of facts.

7. The Texas Court of Appeals denied Petitioner's motions and ordered him to proceed on appeal without the statement of facts.

REASONS FOR GRANTING THE WRIT

This is an important federal constitutional question concerning the due process and equal protection clause of the Fourteenth Amendment to the Constitution of The United States. It involves the denial of a pro-se litigant's right to appeal by denying him access to the statement of facts, after said court had improperly required the petitioner to secure the cost of the statement of facts via. extra appeal bond, pursuant to the Texas Rules of Appellate Procedure Rule 49. Respondent's Brief in Opposition at Page 7 states that Petitioner was not required to pay the extra

bond and he did it upon his own, yet at Appendix A of Respondent's brief is an order requiring Petitioner to post the extra bond pursuant to Rule 49 Texas Rules of Appellate Procedure by December 29, 1988.[2]

THERE IS NO EVIDENCE THAT PETITIONER WAS NEGLIGENT OR AT FAULT IN OBTAINING THE STATEMENT OF FACTS

Contrary to Respondent's Brief in Opposition, there is no showing that Petitioner was negligent or at fault in obtaining the statement of facts. Whether the Petitioner wanted a free ride is not an issue. The cost of the statement of facts was secured. If said security was not enough, then it was the responsibility of the court reporter, not the Respondent, to file a motion to increase the

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[2]Rule 49(c) Texas Rules of Appellate Procedure states that unless Petitioner post additional bond within 20 days, his appeal will be dismissed.

amount of cost bond. Palacio v. Johnson, 663 S.W.2d 490 (Tx. App. 1 Dist. 1983).

The Texas Court of Appeals for the First District of Houston, Texas further held that the official court reporter is compensated as an official of the state for the performance of her duties, including the recording of proceedings for appellate review. The court reporter has no right to payment as a condition precedent to her official duty of preparing the statement of facts. The court reporter has a mandatory duty to prepare the statement of facts upon request. Palacio v. Johnson, supra; Alexander v. Bowen, 581 S.W.2d 714, 715 (Tx. App. Dallas, 1979).

If the court reporter will not prepare the statement of facts, the Petitioner has no control over that court reporter. The only thing that an appellant can do is to request leave from the Court of Appeals. The Court of Appeals has constitutional jurisdiction over the situation. Palacio v. Johnson, supra; O'Neal v. Stoval, 580

S.W.2d 130, 132 (1980). The Petitioner fulfilled every rule of civil procedure required of him to obtain the statement of facts.

THE COURT OF APPEALS IMPROPERLY DENIED THE PETITIONER ACCESS TO THE STATEMENT OF FACTS

The Court of Appeals ordered the Petitioner to post an additional appeal bond to pay the cost of the statement of facts in the trial court pursuant to the Texas Rules of Appellate Procedure Rule 49 upon the motion of the Respondent to strike the original appeal bond.[3] Unless the attorneys for the Respondent were representing the trial court reporter or the Respondent had a vested interest in the payment for the statement of facts, the actions of the Court of Appeals were arbitrary and effected an unjust denial of Petitioner's fourteenth amendment rights of equal protection and due process by its improper use of an otherwise fair and impartial Appellate Rule of Procedure.

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[3] See Appendix A of Respondent's Brief in Opposition

TRAP, Rule 49 states in part as follows:

> "Sufficiency of a cost or supersede as bond or deposit or sureties thereon or any other bond or deposit under Rule 47 shall be reviewable by the Appellate Court for insufficiency . . . "

However, TRAP, Rule 47 states that a judgement debtor may file a sufficient bond payable to the judgement creditor. Respondent was not a judgement creditor with respect to the cost of the statement of facts. Therefore, the Texas Court of Appeals had no jurisdiction to require Petitioner to post an additional appeal bond upon the motion of the respondent.[4]

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[4]Had the court reporter desired additional security for the payment of his fee, his proper relief is prescribed by Texas Rules of Civil Procedure 354, by filing a motion to increase the amount of the cost bond with the trial court. Palacio v. Johnson, 663 S.W.2d 490, 492 (Tx. App. 1983).

Further, if this cause against the Respondent was indeed frivolous or meritless, as stated in the Respondent's Brief in Opposition, the Respondent at anytime during the trial court's proceedings could have made a motion to said court to dismiss this action just as easily as it made its motion to strike the appeal bond.

Wherefore Petitioner's complaints and Petitioner's appeal is not without merit, this court should disregard the Respondent's Brief in Opposition and should grant Petitioner's Writ for Certiorari to The Supreme Court of Texas and reverse said court and order a new trial.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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